

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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KEITH PHOENIX,

Petitioner,

v.

**MEMORANDUM & ORDER**  
17-CV-5544 (MKB) (LB)

SUPERINTENDENT MICHAEL CAPRA,

Respondent.  
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MARGO K. BRODIE, United States District Judge:

Petitioner Keith Phoenix, proceeding *pro se*, brings the above-captioned petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that he is being held in state custody in violation of his federal constitutional rights. (Pet., Docket Entry No. 1.) Petitioner’s claims arise from a 2010 judgment of conviction entered in New York State Supreme Court, Kings County, following a jury trial at which he was convicted of murder in the second degree as a hate crime and attempted assault in the first degree as a hate crime. (*Id.* at 1.) On February 26, 2018, the Court referred the petition to Magistrate Judge Lois Bloom for a report and recommendation. (Order dated Feb. 26, 2018.)

By report and recommendation dated August 24, 2018, Judge Bloom recommended that the Court deny Petitioner’s writ of habeas corpus (the R&R”). (R&R, Docket Entry No. 8.) Judge Bloom also recommended that no certificate of appealability issue and that the Court certify pursuant to 28 U.S.C. § 1915(a) that any appeal from a judgment denying this petition will not be taken in good faith. (*Id.* at 12.) No party has objected to the R&R.

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject,

or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”

28 U.S.C. § 636(b)(1)(C). “Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s report and recommendation if the party fails to file timely objections designating the particular issue.” (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, the Court adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the Court denies the petition for a writ of habeas corpus, declines to issue a certificate of appealability, and certifies pursuant to 28 U.S.C. § 1915(a) that any appeal from this judgment denying this petition will not be taken in good faith. The Clerk of Court is directed to close this case.

SO ORDERED:

s/ MKB  
MARGO K. BRODIE  
United States District Judge

Dated: October 11, 2018  
Brooklyn, New York